

# Globalisation and Emergence of State's New Constituent Population: An Overlooked Aspect of Internationalisation of Crime in Contemporary Japan

Tomonori TAKI

## Abstract

In the currently ongoing globalisation process, states are influenced by transterritorial forces, and the states' responses to these forces create yet other transterritorial forces that influence actors in world politics. Under such circumstances, how is the relation between the state on the one hand, and its constituent population within the territory where the state's sovereignty can reach on the other, changing? How could the terms of such a relationship be reconfigured accordingly? The author has investigated elsewhere (Taki forthcoming) the Japanese state's response to the 'language barrier problem' in Japan's criminal justice process, the presence of which was publicly acknowledged in the late 1980s. This article assesses the findings of the above investigation, in order to answer the aforementioned question about the making of a social contract between partially transterritorial state and post-national citizens under globalisation. This article argues that, despite the Japanese state managed to tackle 'internationalisation of perpetrator of crime' by introducing judicial interpretation, it has excluded 'internationalisation of victims of crime' from its agenda, leaving this task a long overdue.

## Key Words

International Migration, Crime Control, Language Barrier, Post-national Citizenship

## Introduction

Despite the changes brought about by the progression of globalisation, some aspects of world politics remain unchanged, the most notable one being the fact that states continue to exist and operate as key — though not the sole — actors in world politics. How can such stability and changes, in particular changes in the population constituting society and the state, reconcile each other? The author investigated elsewhere (Taki, forthcoming; Taki, 2004) in the 'language barrier problem' in Japan's criminal justice process, which was publicly acknowledged at the end of the 1980s, because the tension between stability and change in contemporary international relations is manifest in this problem. Having found in these studies that the Japanese state managed to respond to the language barrier problem, the current study places the above finding into a wider context of contemporary world politics, in order to answer the above-mentioned question about the reconciliation between changes and stability. There are two sections in the main body of this article. Section 1 explains briefly what the language barrier problem is, why and to whom it is a problem, before reporting how the Japanese state addressed the problem. Drawing from literature on political theory,

international political economy, and the history of migration to and from Japan since the nineteenth century onwards, section 2 makes a theoretical assessment of the significance of the Japanese state's response to the language barrier problem to the relation between the state and its constituent population under the globalisation process. The article argues that, despite the fact that the Japanese state has been largely successful in responding to a challenge from one aspect of the 'globalisation of crime', it omitted problems related to another aspect of the above 'globalisation', leaving the need to 'internationalize' (Cox 1996) the Japanese state's policy, in consideration of its influence on other countries in the East Asian region and elsewhere.

## Section 1 The Language Barrier Problem in Japan's Criminal Justice Process

A language barrier could emerge between speakers of any different languages at various occasions. This article pays particular attention to the language barrier problem in Japan's criminal justice process which was publicly recognised in the late 1980s. The language barrier problem manifests for the parties involved firstly as difficulties in verbal communication, but there is another dimension, namely legal and political problems that arise following difficulties in communication. The language barrier affects both non-Japanese speaking foreigners who were brought into Japan's criminal justice process, either as suspects, defendants or witnesses, and also Japanese state officials. The language barrier matters to non-Japanese speaking foreigners, because it threatens their right to a fair trial. In addition, the language barrier also matters to the Japanese state, because whether the state is able to respond to such a challenge from globalisation shows a retention or loss of the state's capability in international relations.

The Japanese state publicly admitted at the end of the 1980s that many criminal investigations of non-Japanese speaking suspects were carried out only in Japanese, without interpretation. Civil rights campaigners raised their voices to increase public awareness of the issue, lobbied the criminal justice institutions to improve the situation, and also monitored the investigation and public trial of non-Japanese speakers through the Duty Counsel introduced throughout the country at the beginning of the 1990s. The police, public prosecutors and courts, meanwhile, responded to the language barrier problem in two steps. The first step was to introduce judicial interpreters into investigations and public trials, and the second was to improve the quality of such interpretation.

The introduction of judicial interpreters began at the end of the 1980s, but this was primarily to improve the efficiency of criminal investigations. The quality of the interpretation soon proved to be inadequate. Consequently questions were raised, both by civil rights campaigners against the criminal justice institutions in general, and also by courts against the investigators. In 1990 and 1991 this questioning was most intense, and this almost constituted — if temporarily — a crisis of Japan's criminal justice institutions' legality and legitimacy in exercising penal power to non-Japanese speaking suspects and defendants. The Japanese state then began making renewed efforts from the early 1990s to improve the quality of judicial interpretation, as well as reconsidering the operation of the criminal justice institutions towards a more legal and legitimate exercise of penal power. Despite the efforts made in the last decade,

various problems still remain until today. Nevertheless, when compared with the beginning of the 1990s, improvements have been made both in terms of frequency and quality of judicial interpretation.

The Japanese state thus largely managed to tackle the language barrier problem and recovered its legality and legitimacy in exercising its penal power over the foreign population within the Japanese territory. That judicial interpretation is now increasingly available for non-Japanese speakers means that the Japanese state acknowledges the importance of protecting some aspects of human rights of the non-national population in its territory. The introduction certainly addressed the problem of the legality and legitimacy of using a state's power, but there is another issue that this policy ignored. This omission carries an important significance to the relation between the state and its constituent population under the currently ongoing globalisation process. It is such a problem of a social contract under globalisation that this article now turns to.

## Section 2 The Japanese State's Response to the Language Barrier Problem: What it Has Addressed and Omitted

In the globalisation process, states delegate some of the tasks that they used to perform themselves to other actors in world politics, be they private sector, supra-state institutions, or sub-state actors, while retaining some key tasks. Meanwhile, the constituent population of some societies — hence that of some states — are becoming more versatile than before as the globalisation process intensified in recent decades. In other words, despite being considered that (in some cases) a society consists of a population who share largely similar characteristics, it is becoming increasingly evident that a society is made of groups of people with manifold attributes. International labour migration as a force of globalisation contributes to making such a situation. As a consequence of the above two kinds of reconfiguration in world politics, cases are emerging in which the state is responsible to the new constituent population, especially when performing the core tasks for which the states remain in charge under globalisation. This subsection examines, in two steps, whether the above applies to crime control performed by the state. The first step is to discuss what remains stable and what is changing between the state and its constituent population. The second is to assess the Japanese state's response to the language barrier problem as a force of globalisation, in light of the above changes and stability in world politics.

### (1) Change and stability in world politics under the globalisation process

The guarantee of bodily safety of its constituent population has been one of the key responsibilities of the modern state (Kume et al. 2003: 55). Adam Smith argued that the state should be held responsible for the maintenance of domestic order (Smith 1995: Book V, Chapter 1). The state which Smith conceived is a liberal and minimal state, and the currently ongoing globalisation process entails a reconfiguration of the welfare state towards this liberal and minimal state. Nevertheless, the fact that even Smith, the original advocate of the 'Night

Watch ' state ( though this is not his own naming ) considered that the state should be responsible for the natural rights of its citizens clearly shows that the state will not be released from this obligation under the globalisation process. The notion of citizenship, of which assurance of bodily safety is a component ( Marshall 1992 ) developed and extended its coverage with the development of modern states from the eighteenth century onwards ( Castles and Davidson 2000, Chapter 2 ) This extension of citizenship coincides with state building, and state building is closely associated with the development of a political economy. How, then, are political economies and the states changing now ?

From around the 1970s, national political economies became mutually overlapped, thus creating a globalising ( though *not* fully ' globalised ' ) political economy. As a consequence, the characteristics of the state are changing from a territorial state to a transterritorial state ( Scholte 1999 ) In addition, the force of globalisation affects people to move within and between countries. The constituent population of the state has thus become more versatile than before. This is shown in Table 1.

There are some key tasks of a state that will not change with the progression of globalisation, and the maintenance of order through controlling crime is a case in point. However, how can a globalising state perform this task ? To consider this requires an understanding of what is involved in the globalisation of crime.

Table 1. State's constituent population : territorial state versus partially transterritorial state

	Territorial State	Partially Transterritorial State
Political and economic activities	Management of national political economy	Management of national political economy and globalising economy through ODA, FDI, and cultural export
Constituent population	Legally defined nationals associated with the state by the fact that they are resident in the territory throughout their life-time ( Territory-bound, full-time nationals )	<ol style="list-style-type: none"> <li>1. Legally defined nationals within the territory</li> <li>2. Legally defined nationals operating abroad</li> <li>3. Population in foreign countries where Japan's influence can reach ( TNCs 'corporate social responsibilities where they made investments and/or operate )</li> <li>4. Population in Japan who arrived under structural conditions to which Japan has contributed to create ( Transterritorial and part-time citizens )</li> </ol>

( Compiled by author )

## (2) An assessment of the Japanese state's response to the language barrier problem

Considering where crime takes place, and in what way a person is involved in crime, either as a perpetrator or a victim, there are four aspects in the 'globalisation of crime', as shown in Table 2.

From the description in Section 1 and the above table, it is evident that the Japanese state addressed the third aspect of the globalisation of crime by introducing judicial interpretation. This itself is indeed an important task to perform for a state undergoing the globalisation process. However, considering that the transterritorial and part-time citizens now constitute the population in the society and political economy of Japan, the Japanese state should and could also tackle the fourth aspect of globalisation of crime, that is when victims are non-national. There are at least three points that support this argument.

First, crime control is a territory-bound activity, and as such the state where crime takes place should primarily be responsible for controlling such crime. When a national of country A falls victim of crime when she/he is staying in country B, normally state B operates a criminal investigation, and state A will not directly act in the territory of state B to rescue the victim or search for the perpetrator of the crime. This is so because the states observe the principle of non-intervention in each other's affairs. Cooperation between criminal investigators of different countries does exist today, but this is in contrast with some state's direct operations in another country. In this sense, crime control — carried out for the maintenance of domestic order and the safety of the population — is a business closely tied to geographical territory, even in the age of globalisation. If state B is indifferent to the safety of the nationals of country A staying in country B for one reason or another, there emerges a vacuum in world politics where one

Table 2. Four aspects of 'globalisation of crime': diversification of where and to whom the state's crime control is responsible

	Who ?			
	I. Perpetrator of crime: national	Victim of crime: national	Perpetrator of crime: non-national	Victim of crime: non-national
Where ?				
Before globalisation intensified:	Inside territory	Inside territory	Outside territory	Outside territory
Now:	Outside territory	Outside territory	Inside territory	Inside territory
What ?				
Example of state's action	International cooperation on crime control	International cooperation on crime control	Judicial interpretation	?

( Compiled by author )

person's safety — a natural right — will not be secured by anyone.

Second, many of the migrants in Japan are more than just 'foreign nationals', and the Japanese state should accommodate their interests, in particular their safety, as such. Migration takes place between two places where there are mutual interactions. These two places can be within one country, or between different countries. The extension of the politico-economic influence of one country (be it that of the state or a private actor) to another constitutes a force of globalisation, and these two states become closely linked with each other. Similarly, international labour migration connects migrant sending and receiving countries. In this circumstance, the migrants who arrive in the migrant receiving countries are more than just foreigners remaining in other countries, whom the state of the migrant receiving country has nothing to do with. It is therefore necessary for the Japanese state — as a migrant receiving country — to be responsible for migrants' natural rights, in particular ensuring their safety.

In the post-war years Japan has built up an extensive network of production throughout Asia (Hook et al. 2001 : 15, 194). It has been accepted among scholars of international labour migration that the economic influence of industrialized countries creates conditions for labour mobility, both domestically and internationally. In this light, the current international labour migration to Japan reflects Japan's economic and social influence in migrant sending countries (Sellek 2001, Iguchi 2001, Komai 1997, Kuwahara 1991, Tezuka 1989). International labour migration to contemporary Japan is therefore part and parcel of the regionalisation of the political economies connected to Japan. That labour migration does not take place voluntarily in a vacuum, but it does so within a socio-economic context, can be seen in the following cases: international labour migration from the Korean peninsula to Japan in the first half of the twentieth century (Weiner 1994) war-time Japanese migration to Manchuria (Izutsu 2004, Ogawa 1995, Sakamoto 1995) and also domestic labour migration in post-war Japan from rural areas to the major industrial and commercial areas (Yamaguchi 2004 : 18).

Third, there is an imbalance in a social contract — which is still in the making — between migrants in Japan and the Japanese state. The principle of a social contract is that the state and its constituent population have mutual obligations and entitlements (Cohen and Kennedy 2000 : 82-3), and for each party obligations and entitlements should match. As the author demonstrated elsewhere (Taki forthcoming), the Japanese state managed to justify its application of criminal law to foreign nationals as legal and legitimate, by introducing judicial interpreters into its criminal justice process. In other words, the Japanese state acquired the right to treat foreign nationals within its jurisdiction as subjects of its crime control. Now, in light of the citizenship principle mentioned above, such an entitlement of the state should be matched by its obligation to the constituent population of the state. The state controls crime in order to maintain domestic order, and its goal is (supposed to be) to ensure the safety of its population in return for their compliance with the law. How has the Japanese state fulfilled such an obligation in its relation to its migrant population? Research suggests that the Japanese state has worked on this issue to only a limited extent, if it is not totally indifferent.

One indication of this is the extent of reference in the White Paper of Crime compiled by the National Police Agency to the safety of foreign residents in Japan from the late 1980s onwards. At the end of the decade, the police expressed their concerns towards safety of foreign nationals in Japan and reported the measures they actually took. Such concerns disappeared from the White Paper in the early 1990s. In the late 1990s the White Paper began writing about international organized crime, but as far as research for this article has been able to locate, there was almost no explicit mention of the concern about the safety of foreign nationals in Japan.

In legal terms, the Japanese state and the migrant population are not yet in a social contractual relationship. This situation may have been justifiable for the state within the context of the traditional territorial nation state, whose constituent population — its citizens — was considered to be equal to its nationals. What we are witnessing today in Japan at the beginning of the twenty-first century is that a post-national social contract is emerging between the migrant population and the Japanese state. Political economies, states, and the constituent population of the state are all becoming partially transterritorial. However, the state's responsibility to its constituent population, the obligation to ensure their safety, remains unchanged. The social contract that suited the territorial state with territory-bound, fulltime nationals needs to be updated and extended to one that is suitable for the relation between a partially transterritorial state and transterritorial, part-time citizens. In short, the Japanese state is required by the international community — the people and the states of migrant sending countries — to 'internationalize' its policy (Cox 1996) on migration and crime control, in consideration of its influence on those countries. In this connection, taking as many actions as possible to address the problems of human trafficking — one of the starkest manifestations of globalization of victims of crime — has been a duty long over due for the Japanese state, even before the recent publication of Traffic in Persons Report (U. S. Department of State 2004 : 96-7).

## Conclusion

Having shown the emergence of the language barrier problem in Japan's criminal justice process and the Japanese state's response to the problem in section 1, this article considered, in section 2, the significance of the above response to Japan's international relations. Just as the Japanese state and other states — in particular those in East Asia — are closely connected and partially overlap in terms of economic activities, section 2 has found that migrants in Japan from the East Asian region and elsewhere can be considered in practical terms as constituents of the Japanese society, or transterritorial and part-time citizens. The same section then assessed the extent of the Japanese state's response to the language barrier problem, and identified that the Japanese state covered the globalisation of the perpetrators of crime, but did not address the globalisation of the victims of crime. Furthermore, the following three points were made clear in section 2: crime control is a state's activity bound to geographical territory; migrants cross the state border under the indirect but crucial influence of the operation of Japan's political economy, and; the successful introduction of judicial interpretation created an imbalance

between the entitlements and obligations for the Japanese state in relation to foreign residents in Japan with whom the state began to engage publicly. This article has consequently found that the Japanese state should and could tackle the fourth and overlooked aspect of the 'globalisation' of crime, namely, that of the victims of crime.

## Bibliography

[English]

- Axworthy, Lloyd (2001) 'Postscript: Reflections on the Ghana Conference and the Freetown Visit', in McRae, Rob and Hubert, Don (eds), *Human Security and the New Diplomacy: Protecting People, Promoting Peace*, Montreal & Kingston: McGill-Queen's University Press, pp. 260-5.
- Castles, Stephen and Davidson, Alastair (2000) *Citizenship and Migration: Globalization and the Politics of Belonging*, Basingstoke: Macmillan.
- Cox, Robert W. (1996) "Social forces, states, and world orders: beyond international relations theory", in Robert W. Cox with Timothy J. Sinclair, *Approaches to world order*, Cambridge: Cambridge University Press, pp. 85-123.
- Held, David et al. (eds) (1983) *States and Societies*, Oxford: Basil Blackwell.
- Herbert, Wolfgang (1996) *Foreign Workers and Law Enforcement in Japan*, London: Kegan Paul International.
- Hook, Glenn D., Gilson, Julie, Hughes, Christopher W., and Dobson, Hugo (2001) *Japan's International Relations: Politics, economics and security*, London: Routledge.
- Johnson, David (2002) *The Japanese Way of Justice: Prosecuting Crime in Japan*, Oxford: Oxford University Press.
- Marshall, T. H. (1992) 'Citizenship and Social Class', in Marshall, T. H. and Bottomore, Tom, *Citizenship and Social Class*, London: Pluto, pp. 1-51.
- Scholte, Jan Aart (2002) "What Is Globalization? The Definitional Issue-Again", *CSGR Working Paper*, No. 109/02, Coventry: Centre for the Study of Globalisation and Regionalisation, University of Warwick. <http://www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/2002/wp10902.pdf/>  
Cited 13 September 2004
- Sellek, Yoko (2001) *Migrant Labour in Japan*, Basingstoke: Palgrave.
- Smith, Adam (Playfair, William (ed.))(1995) *An Inquiry into the Nature and Causes of the Wealth of Nations*, London: William Pickering.
- Taki, Tomonori (Forthcoming) 'Labour Migration and the Language Barrier in Contemporary Japan: the formation of a domestic language regime of a globalising state', *International Journal of Sociology of Language*.
- (2004) 'Globalisation, Labour Migration and State Transformation in Contemporary Japan', *CSGR Working Paper* No. 129/04. <http://www.warwick.ac.uk/fac/soc/CSGR/abwp12904.html>
- (2003) *Globalisation, Labour Migration and State Transformation in Japan: The Language Barrier and Resilience of the Japanese State in the 1990s*, PhD dissertation, Department of Politics and International Studies, University of Warwick.
- Thomas, Caroline and Wilkin, Peter (2004) "Still Waiting after all these Years: 'The Third World' on the Periphery of International Relations", *British Journal of Politics and International Relations*, 6(2): 241-258.
- Tucker, Robert W. and Hendrickson (2004) 'The Sources of American Legitimacy', *Foreign Affairs*, November/December. <http://www.foreignaffairs.org/20041101faessay83603/robert-w-tucker-david-c-hendrickson/the-sources-of-american-legitimacy.html?mode=print>



Cited 22 October 2004

U. S. Department of State, Office of the Under Secretary for Global Affairs (2004) *Trafficking in Persons Report*.

<http://www.state.gov/documents/organization/33614.pdf>

Cited 15 June 2004

Weiner, Michael (1994) *Race and Migration in Imperial Japan*, London: Routledge.

[Japanese]

Iguchi, Yasushi (2001) *Gaikokujin rōdōsha shinjidai (Foreign workers in a new age)*, Tokyo: Chikuma shobo.

Ishikawa, Tatsuzō (1999) *Sōbō (The People)*, Tokyo: Shinchōsha.

Izutsu, Kikue (2004) *Tairiku no hanayome (The Japanese 'Brides' in Manchuria)*, Tokyo: Iwanami shoten.

Komai, Hiroshi (ed) (1997) *Sinrai, teijū gaikokujin ga wakarū jiten (Encyclopaedia on the New Comer foreigners and the foreigners settled down in Japan)*, Tokyo: Akashi shoten.

Kuwahara, Yasuo (1991) *Kokkyō o koeru rōdōsha (Workers Crossing the Border)*, Tokyo: Iwanami shoten.

Kume, Ikuo et al. (2003) *Seijigaku (Political Science: Scope and Theory)*, Tokyo: Yuhikaku.

Nishikawa, Jun (2004) *Sekai keizai nyūmō (World Economy: An Introduction (Third Edition))*, Tokyo: Iwanami shoten.

Ogawa, Tsuneko (1995) *Sokoku yo — 'chūgoku zanryū fujin' no hanseiki (O Homeland: the half century of the Japanese women remained in China)*, Tokyo: Iwanami shoten.

Sakamoto, Tatsuhiko (1995) *Manshū nanmin — sokoku wa ariya (The Japanese refugees in Manchuria: the homeland lost)*, Tokyo: Iwanami shoten.

Sugihara, Tōru (2002) *Chūgokujin kyōsei renkō (Japan's forced labour migration of the Chinese)*, Tokyo: Iwanami shoten.

Tezuka, Kazuaki (1989) *Gaikokujin rōdōsha (Foreign Workers)*, Tokyo: Nihon keizai shinbunsha.

Urata, Shūjiro and Japan Center for Economic Research(eds) (2004) *Ajia FTA no jidai (The Age of Free Trade Agreements in Asia)*, Tokyo: Nihon keizai shinbunsha.

Yamaguchi, Jiro (2004) *Sengo seiji no hōka (The collapse of Japan's post-war politics)*, Tokyo: Iwanami shoten.

## 要 旨

グローバル化の過程の中で国家は、超領域的な力の影響を受ける一方、国家自体がその影響力の一部を超領域化させている。こうした変化が進行している世界政治の場において国家は、その主権が及ぶ社会の構成員との関係をどのように見直すことができるのか、また見直すべきなのか。筆者は別稿において、1980年代末にその存在が公式に確認された司法プロセスにおける「言葉の壁」問題への日本の国家の対応に関して調査した。そこでの知見が有する意義を、上記の問題との関連において理論的に考察することが本稿の目的である。

## キーワード

国際人口移動、犯罪取締り、言葉の壁、ポストナショナル・シチズンシップ